

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

FREDERICK PENNINGTON, JR., ADC # 71305

PLAINTIFF

V.

5:08CV00018-WRW/BD

WENDY KELLEY, *et al.*

DEFENDANTS

ORDER

Pending is Separate Defendant Patrick Arnold's Motion to Dismiss (docket entry #35). For the following reasons, Dr. Arnold's motion (#35) is DENIED.

Dr. Arnold seeks dismissal of this action under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In his motion, Dr. Arnold asserts that the Plaintiff has failed to state a claim against him for deliberate indifference to serious medical needs. He accurately notes the favorable remarks Plaintiff made regarding Dr. Arnold's attempts to treat him. Despite these comments, however, Plaintiff has stated a claim against Dr. Arnold. Plaintiff alleged that the Defendants delayed and denied him necessary medical treatment. If this allegation is true, one or more of the Defendants may be liable, although it is far from clear who was responsible for the alleged delay. Separate Defendants Kelley, Harris and Byus contend that all medical decisions are made by doctors employed by Correctional Medical Services, Inc. ("CMS")(#20).

This averment clearly suggests that the CMS doctors, including Dr. Arnold, are solely responsible for medical decisions, including any delays in medical treatment. Thus, I cannot dismiss Dr. Arnold as a defendant at this stage of the litigation, especially considering Plaintiff's express need to conduct additional discovery (#54).

Accordingly, Defendant Dr. Arnold's Motion to Dismiss (#35) is DENIED.

IT IS SO ORDERED this 24th day of September, 2008.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE